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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

# memorandum

TO: Director, Reference Information Center  
Chief, Media Bureau

FROM:  Daniel M. Armstrong  
Associate General Counsel

SUBJECT: *National Cable & Telecommunications Association, et al. v. Brand X Internet Services, et al.*, No. 04-277 and *Federal Communications Commission and the United States of America v. Brand X Internet Services, et al.*, No. 04-281. Filing of two Petitions for a Writ of Certiorari in the Supreme Court of the United States.

DATE: September 9, 2004

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This is to advise you that on August 31, 2004, two Petitions for a Writ of Certiorari filed by the National Cable & Telecommunications Association, *et al.* and the Federal Communications Commission and United States of America were docketed in the Supreme Court of the United States.

Petitioners seek Supreme Court review of the Ninth Circuit's ruling in *Brand X Internet Services, et al. v. FCC*, 345 F.3d 1120 (9<sup>th</sup> Cir. October 2003) that cable modem service falls within the definition of "telecommunications service" under the Communications Act.

The Court has docketed these cases as Nos. 04-277 and 04-281. The attorney assigned to handle the litigation of these cases is Nandan Joshi.